TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 91.

A. G. COFFEY CLAIMANT OF TEN BARRELS OF APPLE BRANDY AND OTHER ARTICLES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED OCTOBER 11, 1882.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Proceedings of the circuit court of the United States for the district of Kentucky at a regular term began and held at the Federal court hall, in the city of Louisville, on Monday, February 20th, 1882.

Present: Hon. Jno. W. Barr, judge of the United States for said district.

Information.

UNITED STATES *vs.* 10 BBLS. APPLE BRANDY, etc.

Be it remembered that heretofore, to wit, on the 4th day of November, 1881, came the attorney for the United States, and filed in the clerk's office of our said court his information in the above-styled case.

Which said information is as follows, to wit:

Information.

UNITED STATES OF AMERICA, *District of Kentucky,* } *ss:*

2 In the Circuit Court of the United States within and for the 6th Circuit and Kentucky District, held at Louisville, Ky.

To the hon. judges of the circuit court of the United States in the district aforesaid:

The information of Geo. M. Thomas, attorney of the said United States of America within and for the district of Kentucky aforesaid, who comes here in his proper person, and, in the name and behalf of the United States and of all other persons concerned, propounds and gives the said judges to know, understand, and to be informed that on the first day of April, A. D. 1881, at the district of Kentucky, on land, James A. Ray, dep. collector of internal revenue for the 2nd collection — of Kentucky, did seize the following goods, wares, and merchandise, to wit, ten (10) barrels of apple brandy, one apple mill, 37 tubs, and two copper stills, said to be the property of one A. G. Coffey, and now has the same at the district
3 aforesaid as being forfeited to the United States for the causes hereinafter mentioned.

For that the said A. G. Coffey, who was then and there, to wit, on the day and year aforesaid, at the district aforesaid, engaged in carrying on the business of a distiller, did defraud, and attempt to defraud, the said United States of the tax on part of the spirits distilled by him, and that the said two copper stills and other distilling apparatus were then and there used by him, and that the said distilled spirits were then and there found on the distillery premises of him, the said A. G. Coffey, contrary to the form of the statute in such case made.

2nd. And for that the said ten barrels of distilled spirits for and in respect whereof a tax was then and there imposed by law, and which said tax had not then been paid, were removed, deposited, and concealed with intent to defraud the United States of part of such

tax, and that the said two stills and other distilling apparatus, vessel-, and utensils were then and there proper and
4 intended to — made use of for and in the making of such distilled spirits, contrary to the form of the statute in such case made.

3rd. For that the said ten barrels of distilled spirits on which a tax was then and there imposed by law were found in the custody and possession of a certain person, to wit, the said A. G. Coffey, for the purpose of being sold and removed by him in fraud of the internal revenue laws, and with the design to avoid the payment of said taxes, and that the said two copper stills and other tools and property seized as aforesaid were in the place, yard, and enclosure where said distilled spirits were found, contrary to the form of the statute in such case made and provided.

Whereby and — force of the statutes in such case made and provided the said goods, chattles, wares, and merchandise and property became and are forfeited to the uses of the said statute specified.

5 The said attorney for the United States saith that all and singular the premises are true.

Wherefore he prays that process of law do issue against the said property and merchandise to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show cause on a day named why such forfeiture should not be decreed; and prays other proper relief.

GEO. M. THOMAS,
U. S. Att'y.

Upon which information there issued the following monition & attachment:

Monitor & Attachm't.

DISTRICT OF KENTUCKY, *ss:*

The President of the United States of America to the marshal of the Kentucky district, Greeting:

Whereas an information has been filed in the circuit court of the United States for the district of Kentucky, at Louisville, on the 4th day of November, in the year of our Lord one thousand eight hundred and eighty one, by Geo. M. Thomas, Esquire, attorney of the United States for said district, on behalf of the United
6 States of America, against 10 Barrels of Apple Brandy, 1 Apple Mill, 37 Tubs, and 2 Copper Stills, for reasons and causes in said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said goods, wares and merchandise may be cited in general and special to answer the premises, and, all due proceedings being had, that the said goods, wares and merchandise, may, for the causes in said information mentioned, be condemned and the proceeds thereof distributed according to law, you are therefore hereby commanded to attach the said goods, wares, and merchandise and to detain the same in your custody until the fur-

ther order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited and the proceeds thereof distributed according to the prayer of the
7 said information, that they be and appear before the said court, to be held at Louisville, in and for the district aforesaid, on the first day of its next February term, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court hereto affixed at the clerk's office of said court, in Louisville, this 4th day of November, A. D. 1881, and in the 106 year of our Independence.

Attest: SAM'L B. CRAIL,
C. C. C., K. D.

Upon which the marshal made the following return, to wit:

Marshal's Return.

January 22d, 1882.—Executed this monition & attachment by attaching the articles named within, viz: 10 bbls. apple
8 brandy, 1 apple mill, 37 tubs, & two copper stills, in Russell Co., 4 miles south of Jamestown, and leaving them in the care of Thos. A. Collins for safe keeping, as per his receipt herewith returned, and giving due notice to all persons claiming the same, &c., by making the required publication in the Louisville Commercial, a daily paper published in the city of Louisville, and delivering a copy of this process to A. G. Coffey at the place above named.

W. W. LANDRUM, *Sp'l Bailiff*,
For R. H. CRITTENDEN, *U. S. M.*

The foregoing return subscribed and sworn to by W. W. Landrum, the special bailiff, before me this 3rd of Feb'y, 1882.

AUSTIN BALLARD, *Clk*,
By HENRY PASLICK, *D. C.*

And at a term of our said court, held for its February term, 1882, to wit, on Monday, February 20th, 1882, came the district attorney and filed the proof of publication of the marshal's notice to claimants in the foregoing case, and it appearing from the mar-
9 shal's return on the monition and attachment that he had arrested the goods therein mentioned, and had given due notice to all persons that this court would on this day proceed to the trial and condemnation thereof should no claim be interposed for the same: On motion of said attorney for said informants, proclamation is now made for all persons having anything to say why the same should not be condemned and sold to answer the prayer of the information, to come forward and make their allegations in that behalf.

Thereupon came A. G. Coffey, by Sam McKee, his attorney, and filed his claim and answer herein to the attached effects, viz: 9 barrels distilled spirits, 37 tubs, 1 apple mill, & 2 copper stills.

It is now ordered that the default of all other persons be now entered.

The proof of publication of marshal's notice to claimants above referred to is as follows, to wit:

10 *Proof of Publication.*

United States to Commercial Pub. Co.:

For advertising the annexed notice in the Daily Commercial for 14 times, in space of 36 lines nonpareil, at the rate of 12½ cents per line for each insertion, and 15 per cent. deducted from the above, $53.55.

Personally appeared before me this day Geo. Regan, clerk of the Commercial Pub. Co., who, upon oath, states that the annexed advertisement was published in the Daily Commercial for 14 times, commencing on Feb'y 4 and ending on Feb'y 17th, 1882.

GEORGE REGAN.

Subscribed and sworn to before me this 20th day of Feb'y, 1882.

A. S. DIETZMAN, *N. P., J. C.*

The annexed advertisement above referred to is as follows:

Advertisement.

U. S. Marshal's Notice.

THE UNITED STATES OF AMERICA, *District of Kentucky*, } *ss:*

No. 5176.

11 Whereas an information has been filed in the circuit court of the United States for the district of Kentucky on the 4th day of November, A. D. 1881, by George M. Thomas, Esq., attorney for the United States for the district of Kentucky, who prosecutes herein in behalf of the United States against 10 barrels of apple brandy, 1 apple mill, 37 tubs, and 2 copper stills, alleging in substance that the said articles were seized on the 1st day of April, 1881, by James A. Ray, deputy collector of internal revenue for the second district of Kentucky, for a violation of sections 3257, 3450, and 3458 of the Revised Statutes of the United States, and that said articles became thereby forfeited to the use of the United States of America, and praying process against the same that the same may be condemned as forfeited as aforesaid:

Now, therefore, in pursuance of the monition under the seal of said court to me directed and delivered, I do hereby give
12 public notice to all persons claiming said articles, or in any manner interested therein, that they be and appear before the said court, to be held at the city of Louisville, in and for said dis-

trict, on the first day of its next, February, term, the 20th day of February, A. D. 1882, then and there to interpose their claims and to make their allegations in that behalf.

R. H. CRITTENDEN,
U. S. M., K. D.
GEO. M. THOMAS,
U. S. Att'y.

The claim and answer above referred to is as follows, to wit:

Claim & Answer.

Circuit Court of the United States, 6th Circuit & Kentucky District.

THE UNITED STATES, Pl'ff,
against
TEN BARRELS OF APPLE BRANDY, &c.

And now comes A. G. Coffey and files his claim and answer herein, and says that he is the owner of nine barrels (not ten) of distilled spirits named in the libel or information herein, and the one
13 apple mill, 37 tubs, and two copper stills, and seized by the collector of internal revenue and set out in said plaintiff's information, and that the same is his & belongs to him, and is his property and that of no other. He says it is not true that on the first day of April, 1881, or at any time while he was engaged in the carrying on of the business of a distiller he did defraud or attempt to defraud the United States of the tax on part of the spirits distilled by him, and which was in his possession, and denies that said two copper stills & said distilling apparatus, or any distilled spirits found on his distillery premises, were used, held, or owned by him to defraud the United States of the tax, or any part of the same, for which he was liable.

2. For answer to the 2nd count of plaintiff's libel, he says it is not true that the said nine barrels of distilled spirits claimed by him, and for and in respect whereof a tax was then and there imposed by law, and which tax had not then been paid, were
14 removed, deposited, and concealed with intent to defraud the United States of part of said tax, or of any part thereof, & he denies that said two copper stills and the distillery apparatus were then and there, or at any time, used, or intended to be used, for the production of distilled spirits with any such intent.

Third. For answer to the third count in plaintiff's libel, he denies that the said ten barrels of distilled spirits on which a tax was then and there imposed by law were found in his possession for the purpose of being sold & removed by him in fraud of the internal revenue laws, and with the design to avoid the taxes thereon.

As to one of the ten barrels of distilled spirits seized by the collector and found on his premises he makes and asserts no claim.

He never at any time had anything to do with said one barrel of apple brandy, or with its removal and concealment in
15 any manner whatever, and never owned, received, or had any control, care of, or custody of the same in any manner what-

ever, but claims nine barrels as his own, and denies that he concealed, removed, and deposited any part of said distilled spirits so seized by said collector, & which was found on his premises, in fraud of the revenue laws of the United States, with design to avoid the payment of the taxes or any part thereof, or that he was concerned in removing, concealing, or dispositing said spirits, or any part thereof, with any such intent.

Fourth. And, further answering, the said claimant states that the alleged removals and concealments of distilled spirits set forth in the various assignments and charges of frauds and attempts at and intent of fraud in carrying on and engaging in the business of a distiller, and in removals, disposing, and concealing of distilled spirits, alleged against him and now answered, are the same removals, concealments, and depositing and same car-
16 rying on of business of a distiller as are recited in a criminal information filed against him at the October term of this court, 1881, and that all of said "removals," "concealments," "depositing," and "intents to defraud" the same complained of in plaintiff's information herein might have been established, if said allegations be true, under sections 3450, 3452, 3296, or 3257, upon which or some one or more of which the counts in said criminal information were based; that all of the evidence which would be necessary to establish, and competent, under the various assignments & charges of fraud set out in plaintiff's libel herein would also be competent and would tend to establish the allegations of said criminal information. That the various charges of fraud and causes of forfeiture alleged by plaintiff herein relate to the same subject-matter and are based on the same transactions as the various allegations in said crim-
17 inal information contained, so far as they relate to alleged offenses under sections 3450, 3452, 3453, 3296, or 3257, and that as the time when said criminal information was drawn by the attorney for the United States, and at the time it was considered by him, all of the facts which would be competent to sustain the allegations of plaintiff's libel herein were known to and within the possession of the representative of the United States.

And he avers and says that the United States ought not to maintain its action herein for the penalty denounced in sections 3257, 3450, & 3453, for, at the October term, 1881, in this circuit & district & in this court herein, a criminal information, the same above referred to, was found against him, the counts of which were based on sections 3257, 3256, 3450, & 3453, & 3296, or on some one or more of them, alleging the carrying on the business of a distiller with intent to defraud the United States; that he was concerned in depositing, concealing, and removing a large quantity of
18 distilled spirits with intent to defraud the United States of the taxes imposed thereon, and having had in his custody a large quantity of distilled spirits with the design to avoid the payment of the taxes imposed thereon; that the counts in said criminal information contained the same charges in substance and effect, and are the same allegations of offenses and frauds and attempts at frauds, and are founded on the same sections of the Statutes of the

United States as the matters and things herein alleged in plaintiff's libel; and he says that all and singular of said matters at said term and in this court were tried and inquired into and fully heard, and on the hearing thereof the jury, duly empaneled and sworn, found this defendant not guilty, and the court rendered a judgment acquitting this defendant of the charges of frauds and attempts at frauds therein alleged; and all of which are the same frauds
19 now set out by plaintiff and herein answered by this defendant. Wherefore he prays that said libel be dismissed and that a writ of restitution may issue, and that the nine barrels of apple brandy, distilled spirits, and the two copper stills, 37 tubs, and all the distillery apparatus seized herein be returned to him, and for all proper relief, &c.

T. T. ALEXANDER,
SAMUEL McKEE,
Att'ys for Coffey.

STATE OF KENTUCKY, *County of* ——:

A. G. Coffy says he believes the statements in the foregoing claim & answer are true.

A. G. COFFY.

Subscribed and sworn to before me by A. G. Coffy this the 15th day of February, 1882.

A. C. WELLS,
Clerk Russell County Court.

I acknowledge myself security for all costs for which the
20 claimant in this case may be liable.

JOSEPH E. HAYS.

Taken and acknowledged before me this 20th Feb'y, 1882.
SAM'L B. CRAIL, *Clerk.*

Order.

And at another day of said February term of said court, to wit, on Tuesday, February 21st, 1882, came the district attorney and filed his demurrer herein. The court, not being advised thereof, takes time.

The demurrer above referred to is as follows, viz:

Demurrer.

Circuit Court of the United States, Sixth Circuit, Kentucky District.

THE UNITED STATES *vs.* TEN BARRELS OF APPLE BRANDY, &c.

Demurrer to 4th paragraph of claim & answer.

The plaintiff demurs to the fourth paragraph of the claim and answer of defendant Coffey herein, because it does not state facts sufficient to constitute a defense.

GEO. M. THOMAS,
U. S. Att'y.

21 *Order.*

And on another day of said February term, to wit, on Wednesday, March 1st, 1882, came the district attorney; came also the claimant, A. G. Coffey, by T. T. Alexander and Sam'l McKee, his attorneys. Thereupon came a jury, to wit, Andrew Davidson, G. W. Creighton, W. Cook, Wat. McMakin, Edward Maley, Jas. W. Atkins, B. S. McCormick, H. C. Weeden, Chas. W. Shipp, Jas. B. Evans, W. B. Tucker, and Henry Clay, who were elected, tried, and sworn to well and truly try the issue joined.

The evidence and arguments of counsel were heard, and the court having delivered its instructions, the jury retired to consider of their verdict, and returned into court the following verdict, to wit:

"We the jury, find for the United States.

"J. B. EVANS, *Foreman.*"

Thereupon the claimant, by his attorneys, moved the court to set aside the verdict herein upon written grounds, which are filed.

Judg't.

22 The claimant also moves the court for judgment for him on his claim and answer, and on all the pleadings herein, notwithstanding the verdict of the jury. And the court not being advised of said motion, takes time.

The grounds to set aside the verdict above referred to are as follows, to wit:

Grounds for New Trial.

THE UNITED STATES
vs.
TEN BARRELS DISTILLED SPIRITS, A. G. COFFEY.

The claimant, A. G. Coffey, moves the court to set aside the verdict herein—

1. Because the court erred in instructing the jury as to the law of the case.
2. That the verdict is contrary to law and the evidence in the case.
3. Because the court has no jurisdiction.
4. Because the information is insufficient.

And, further, claimant also moves the court for judgment for him on his claim and answer herein, and on all the pleadings
23 herein, notwithstanding the verdict of the jury herein.

ALEXANDER & McKEE,
For A. G. Coffey.

Order.

And on another day of said February term of said court, to wit, on Tuesday, April 25th, 1882, the court being now fully advised of the motion of the claimant to set aside the verdict herein, and for judgment for him on his claim and answer, and on the pleadings,

notwithstanding the verdict, it is therefore considered by the court that said motion be, and is hereby, overruled. It is further considered by the court that the claimant, A. G. Coffey, has not supported his claim to any part of the attached effects herein. It is further considered by the court that the United States recover of the said A. G. Coffey their costs in and about their defense against said claim herein expended.

It is further considered by the court that the attached
24 effects herein, viz, 10 barrels of apple brandy, 1 apple mill, 37 tubs, and 2 copper stills, be, and the same are hereby, condemned as forfeited to the United States for the reasons and causes in the information specified; that the marshal sell the same Monday, being the first day of the circuit court or county court, at the court-house door in the town of Jamestown, Russell county, Ky., at public auction, for cash in hand, to the highest bidder, after having advertised the time, place, and terms of sale, at least ten days before day of sale by printed hand-bills posted up at the court-house door, post office, and five other places in Jamestown, Russell Co., Ky.; that a *venditioni exponas* do issue, and that the marshal do make report thereof and pay the proceeds of sale to the clerk of this court, subject to the assessment and further order of the court.

And it appearing that the stills herein adjudged forfeited are each worth less than one thousand dollars, it is ordered that the
25 marshal do, before sale, cause the said stills to be so destroyed as to prevent their use in the production of spirits, and after such destruction he do sell the materials thereof. The court filed a written opinion, to all of which the claimants, by *his* attorney, except.

The opinion above referred to is as follows, to wit:

Opinion.

UNITED STATES *vs.* 10 BBLS. APPLE BRANDY.

The claimant, Coffey, has made a motion for a new trial in this case, and his counsel have presented and urged with ability two grounds for sustaining the motion.

1. That the district court has exclusive jurisdiction of this matter.

2. That the United States has prosecuted the claimant, A. G. Coffey, on a criminal information in this court, at its February term, 1881, on charges which covered the offense for which this brandy was seized by the collector, and that, upon the trial thereof, the jury found the said Coffey "not guilty," and his acquittal under said criminal proceeding is a bar to this proceeding.

26 In regard to the jurisdiction of this court I think there can be no serious question. The 4th subdivision of section 629 of Revised Statutes provides that the circuit court shall — jurisdiction "of all causes arising under any law providing internal revenue." It is true in the previous part of the same section it provides that the circuit court shall have jurisdiction of "all suits at law or in equity arising under any act providing for revenue from imports or tonag's, except cival causes of admiralty and maritime jurisdic-

tion and seizures on land or on waters not within admiralty and maritime jurisdiction, and except suits for penalties and forfeitures," but these exceptions must be to suits at law or in equity for causes other than those arising under laws providing internal revenue.

The 8th subdivision of section 563 of Revised Statutes, which section defines the jurisdiction of the district court, gives the district courts jurisdiction of "all civil causes of admiralty and mar-
27 itime jurisdiction. * * And of all seizures on land and on waters, not within admiralty and maritime jurisdiction," and provides that such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given the circuit court." This exception recognizes the fact that there are seizures of which the circuit court has jurisdiction. The fact that there is an appeal from the district court to the circuit court may be a reason why it would be better to have such proceedings as this taken in the district court, but it does not prove that the circuit court does not have original jurisdiction of them.

The act approved Mar. 3rd, 1875, which determines and defines the jurisdiction of the circuit courts, provides that "the circuit court shall have exclusive cognizance of all crimes and offenses cognisable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the district
28 courts of the crimes and offenses cognizable therein;" and the act of Mar. 3rd, 1879, entitled an act to "give circuit courts appel-ate jurisdiction in certain criminal cases," provides that the circuit court * * * shall have jurisdiction of writs of error in all criminal cases tried before the district court where the sentence is imprisonment or fine and imprisonment, or when, if a fine only, the fine shall exceed the sum of three hundred dollars." Yet no one would seriously contend that the act of 1879 affects in the least the original jurisdiction of the circuit court.

The seizure in this case is made under a law which provides internal revenue and is part of the machinery by which the revenue laws *is* enforced.

I conclude, therefore, whether this proceeding be considered as simply a proceeding to enforce a forfeiture or in the nature of a criminal proceeding for an offense which Coffey has committed, the circuit court has jurisdiction.

2d. This proceeding, however, is not a criminal one, but a
29 proceeding in —, whereby the United States is seeking to have the judgment of this court that the seizure of its officer was legal, and that the property seized is forfeited.

The Supreme Court in discussing a similar question, The Palmyra, 12 Wheaton, p. 14, say: "The thing is here primarily considered as the offender, or rather the offense is attached primarily to the thing, and this whether the offense be *malum prohibitum* or *malum in se.* * * * Many cases exist where the forfeiture for acts done attaches solely *in rem*, and there is no accompanying penalty *in personam.* Many cases exist where there is both a forfeiture *in rem* and a personal penalty, but in neither class of cases has it ever been decided that the prosecutions were dependent upon each other. But the

practice has been, and so this court understands the law to be, that the proceeding *in rem* stands independent of and wholly unaffected by any criminal proceeding *in personam*."

30 This was the unanimous decision of the Supreme Court (Justice Story delivering the opinion of the Court), and, as far as I can find, has never been overruled or modified.

In the recent case of the U. S. *vs.* Chauteau, 102 U. S. Reports, 603, the Court decided a suit on a distiller's bond, the breaches of which were that the distillers omitted to make certain entries in a book required by section 3303, by which he was enabled to defraud the United States of the tax, and that he removed his spirits in violation of section 3296 to a place other than his distillery warehouse without the tax first being paid thereon, — was barred by a previous compromise of indictments against the distiller. These indictments were based upon sections 3296, 3281, & 5440.

The Court, through Justice Field, uses very broad language in its opinion, but the decision itself does not conflict with the Palmyra case. Neither does the decision of Justice Miller in the U. S. *vs.* McKee, 4 Dillon, conflict with it.

31 In the Chauteau case the question was what was covered by the compromise, and in the McKee case what was covered by the correction and subsequent pardon.

It will be readily admitted that a compromise with the United States or a pardon granted by the President should in the absence of language restricting its terms cover all kinds of punishments, penalties, or forfeitures.

The information in this case in its 1st count proceeds under the 3257 section of Revised Statutes, and in its 2nd & 3rd count- under sections 3450 & 3453. The finding of the jury is a general one, but the evidence could not have sustained the 2nd count under section 3450, because the brandy seized was neither removed -or concealed with the intent to defraud the United States of the tax.

The evidence, however, sustained the finding of the jury on either of the other counts.

Section 3257 provides that "whenever any person engaged

32 in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or any part thereof, he shall forfeit the distillery * * * and all distilled spirits, and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than $5,000, and be imprisoned not less than six months nor more than three years."

Section 3453 provides that "all goods * * * or objects, on which taxes are imposed, which shall be found in the possession or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized by the collector * * * and shall be forfeited to the United States," and provides that "proceedings to enforce such forfeitures shall be

in the nature of a proceeding *in rem* in the circuit court or
33 a district court of the United States for the district where such seizure is made."

The criminal information against the claimant Coffey, in one of of its counts, charged an offense under section 3257, but it will be observed that there is a forfeiture as well as a fine and imprisonment. This is, in a broad sense, a double punishment for one offense.

The mode of procedure in revenue cases has always been to seize the property, and, if the Government officer thought best, to prosecute the offender as well, but these proceedings are, and must in the nature of things be, independent of each other.

It is quite true that Congress could have made the forfeiture of the property seized dependent upon the conviction of the offender, but it has not done this; on the contrary, in section 3453 it expressly provides that forfeitures under that section shall be "by a proceeding in the nature of a proceeding *in rem*." And in section 3333 it is provided that "whenever seizure is made of distilled spirits
34 found elsewhere than in a distillery or distilling warehouse, &c., * * * the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed, and that all the requirements of the law in relation to the payment of the tax have been complied with."

These sections show a legislative recognition of proceedings *in rem* to declare spirits and other articles seized forfeited.

A. G. Coffy in the criminal information was entitled and was given the benefit of a reasonable doubt, which all persons charged with a fraud or criminal offense has, but by the express terms of this section (3333), when he became a claimant of the brandy which was seized in his possession, he was deprived of the benefit of a reasonable doubt, and the burden of proof thereon upon him. This proceeding, although based upon the violation of a revenue law, *it* is a civil proceeding, and should, in the absence of a statute, be
35 governed by the rules of evidence applicable to civil causes.

It is, therefore, not accurate to say that Mr. Coffey is being twice tried for the same offense, although there are two proceedings, one to determine whether or not Mr. Coffey shall be punished by fine and imprisonment, and the other to ascertain whether or not the seizure of the brandy by the collector was proper, and to declare it forfeited to the United States.

If there is any positive proceeding, either in England or America, by which in revenue cases forfeitures are declared upon the conviction of the person violating the revenue law, I am not aware of it.

Therefore, giving the decisions in United States *vs.* Chaubeum, and United States *vs.* McKee, their broadest scope, I cannot see that it requires the question of the forfeiture of goods, &c., seized to be dependent upon the conviction or acquittal of the person charged to have violated the revenue laws.

36 I have considered the proceeding as if it had only been under section 3257; if, however, we are to consider it as a proceeding under section 3453, then the second ground for a new

trial cannot be sustained, because under that section the person offending against the revenue law cannot be punished; but I prefer to decide the question as it has been presented, as one in which the party could be punished by fine and imprisonment, as well as by a seizure of his brandy.

Order.

And on another day of said February term of said court, to wit, on Thursday, May 4th, 1882, came the claimant, by T. T. Alexander, his attorney, and moved the court to grant him a new trial herein upon written grounds which are filed.

The grounds for a new trial above referred to are as follows:

Motion & Grounds for New Trial.

United States Circuit Court, Sixth Circuit.

THE UNITED STATES

vs.

TEN BARRELS OF DISTILLED SPIRITS, &c., A. G. COFFEY.

37 The claimant, A. G. Coffey, comes, &c., and moves the court to set aside the judgment rendered herein and grant him a new trial for the following reasons and grounds, to wit:

1st. The jury was sworn & the case heard prematurely, before the issues of law made by the demurrer were disposed of by the court—really no issue subsisted.

2. The verdict is not sustained by the evidence, & is contrary to the weight of evidence and contrary to law.

3. This court had no jurisdiction to try the case. The district court has exclusive jurisdiction of such cases.

4. The information and each and every count thereof is insufficient in law to have and maintain this action.

5. The proceedings do not conform to the requirements of the statutes governing such cases; there was not a lawful seizure,
38 there was no valuation of the goods seized, no list & particular description of the property; there was no notice of seizure published in a newspaper in the collector's district where the property was seized; not a single requirement of the statute in sections from 3074 to 3087 was complied with.

6. The court erred in its charge to the jury.

7. Irregularity of the court and the prevailing party by which the claimant was prevented from having a fair trial.

Wherefore he prays for a new trial, & that the judgment be set aside, &c.

McKEE & ALEXANDER,
For Claimant.

Order.

And on another day of said term, to wit, on Thursday, June 8th, 1882, the court being now fully advised of the motion of claimant

herein for a new trial, it is therefore considered by the court that said motion be and the same is hereby overruled.

To all of which the claimant, by his attorney, except.

39 DISTRICT OF KENTUCKY, *ss:*

I, Samuel B. Crail, clerk of the circuit court of the United States for the district of Kentucky, do hereby certify that the foregoing 38 pages contain a true and complete transcript of the record of the case mentioned in the caption hereof.

Witness my hand and seal of said court this 23rd day of August, 1882.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

SAM'L B. CRAIL, *Clerk*,
By HENRY F. CASSIN, *D. C.*

40 UNITED STATES OF AMERICA, }
District of Kentucky, } *ss:*

The President of the United States of America to the judge of the circuit court of the United States for the Kentucky district, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America, plaintiffs, [and] 10 Barrels of Apple Brandy, &c., A. G. Coffey, claimant, defendant, a manifest error hath happened, to the great damage of the said A. G. Coffey, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first day of our next October term, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said court, at Louisville, in said district, this fourteenth day of August, A. D. 1882, and of the Independence of the United States the one hundred*th* and seven-.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

SAM'L B. CRAIL,
C. C. C., K. D.

Allowed by—
JNO. W. BARR.

41 UNITED STATES OF AMERICA, } ss:
District of Kentucky, }

To George M. Thomas, attorney of the United States for the district of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at city of Washington on the — day of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the said district of Kentucky, wherein A. G. Coffey, claimant of ten barrels of apple brandy & other articles, is plaintiff, and the United States of America are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of August, in the year of our Lord 1882, and of our Independence the 107th.

[Seal 6th Circuit Court, Ky. Dist., U. S. of America.]

JNO. W. BARR.

42 I hereby accept service of the within.
Sept. 11th, 1882.

GEO. M. THOMAS,
U. S. Attorney.

43 Know all men by these presents that we, A. G. Coffey, principal, and Samuel McKee and T. T. Alexander, sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 14th day of August, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately at a term of the circuit court of the United States for the district of Kentucky, at Louisville, in a suit depending in said court between the United States of America, plaintiffs, and A. G. Coffey, claimant of ten barrels of apple brandy and other articles, judgment was rendered against the said A. G. Coffey, and the said A. G. Coffey having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said United States of America, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said A. G. Coffey shall prosecute his writ of error to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

SAMUEL McKEE. [SEAL.]
T. T. ALEXANDER. [SEAL.]

Sealed and delivered in presence of—
SAM'L B. CRAIL.

Approved by—

JNO. W. BARR, *Judge.*

44 Supreme Court of the United States. Of October Term, 1882.
In Error.

UNITED STATES *vs.* 10 BBLS. APPLE BRANDY, &c.

Afterwards, to wit, on the first Monday of October, 1882, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said 10 Bbls. Brandy, &c., A. G. Coffey, claimant, by their attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the information and libel aforesaid and the matters therein contained are not sufficient in law for the said United States to have or maintain its aforesaid action thereof against the said 10 bbls. brandy, &c. There is also error, in this, to wit, the court had no jurisdiction of the subject-matter of the action or of the property seized, nor of the person of the claimant.

There is also error, in this, to wit, there was no sufficient
45 monition, attachment, or seizure of the brandy, &c., and no legal notice and publication of the seizure, & no valuation of the goods, as required by law. There was error also, in this, to wit, in submitting the case to a jury before the demurrer of plaintiff to the 4th count of claimant's answer was disposed of, and submitting the case to the jury before the issues of law were disposed of.

There is error also, in this, to wit, in failing to overrule the demurrer to 4th count of claimant's answer. There was error also, in this, to wit, in the opinion and judgment of the court. There was error also, in this, to wit, in overruling motion in arrest of judgment and setting aside the verdict of the jury, and in overruling claimant's motion for a judgment, notwithstanding the verdict of the jury.

46 There is error also, in this, to wit, that by the revenue, — aforesaid it appears that judgment was given for the United States against A. G. Coffey, claimant, whereas by the law of the same the said judgment ought to have been given for the said A. G. Coffey against the United States, and the said A. G. Coffey prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of said judgment, &c.

G. C. WHEATON,
SAMUEL McKEE, &
T. T. ALEXANDER,
Att'ys for A. G. Coffey, Claimant & Plaintiff in Error.

Endorsed on cover: Kentucky C. C. U. S. No. 91. A. G. Coffey, claimant of ten barrels of apple brandy and other articles, plaintiff in error, *vs.* The United States. Filed 11th October, 1882.

116-127 & 436

Supreme Court of United States.

OCTOBER TERM, 1885.

TEN BARRELS DISTILLED SPIRITS, &c.,
A. G. COFFEY, Claimant, - - Pl'ff in Error.

VERSUS

THE UNITED STATES, - - - - - Defendant.

No. 91

Brief for Plaintiff in Error, by T. T. ALEXANDER.

SAMUEL McKEE,
T. T. ALEXANDER,
G. C. WHARTON,
Attorneys for Plaintiff in Error.

United States Supreme Court.

TEN BARRELS DISTILLED SPIRITS, ETC.,
A. G. COFFEY, CLAIMANT, . . . *Pl'ff in Error,*

VERSUS

UNITED STATES, ... *Defendant.*

No. 1039.

On the 1st of April, 1881, the Deputy Collector of Internal Revenue for the Second Collection District of Kentucky seized ten barrels of apple brandy, one apple mill, thirty-seven tubs, and two copper stills, said to be the property of one A. G. Coffey. The seizure was reported to the collector at his office in Owensboro, Ky., and the *estimated* value of the articles seized was fixed by the deputy aforesaid at $580. The grounds of forfeiture set forth in this report were, "removing brandy of his own manufacture before payment of tax, and attempting to evade tax on brandy," against the provisions of sections 3256, 3257, and 3296, Revised Statutes. At the succeeding term (October, 1881,) of the United States Circuit Court for the Sixth Circuit, Kentucky District, a criminal information against A. G. Coffey, the alleged owner of the ten barrels of apple brandy, etc., was filed in said court, to which he plead not guilty, and upon the trial thereof was found not guilty,

and acquitted of the offense charged. Subsequent to the acquittal of the defendant, viz. in December, 1881, the district attorney filed information and caused monition to issue thereon against the same brandy, etc., and had the marshal of the State to seize the same, and asked a forfeiture of the articles seized, upon and for the identical grounds and reasons set out in thé three several counts in the criminal proceeding of which the defendant Coffey had been acquitted. At the succeeding February term of the court, A. G. Coffey, having executed the requisite bond, filed his answer and laid claim to the property thus seized. The answer of the claimant denied generally and specifically the allegations in each of the several counts of the information, and pleaded a special plea in bar, wherein is set forth "that upon the trial of the indictment (or, more properly speaking, criminal information) in this court the identical same matters were put in issue between the same parties (that is, the United States and the defendant), and verdict and judgment of 'not guilty' was rendered in said trial," and that he ought not to be tried again for the same offense. A demurrer was interposed by the Government to the special plea in bar, but no action was ever taken thereon by the court. On the same day a jury was impaneled, who, under instructions given by the court, found for plaintiff; and after motions in arrest of judgment and new trial were overruled, a judgment of forfeiture and sale of the property seized was entered and the property sold. The case is brought here on writ of error, and a reversal asked because—

1. The Requirements of the Statute not Complied with.

It will be observed that the grounds upon which a forfeiture was claimed in the report of the deputy collector were, "removing brandy of his own manufacture before payment of tax, and attempting to evade payment of tax on brandy,

against the provisions of sections 3256, 3257, and 3296, Revised Statutes."

The criminal information filed against Coffey, as well as that under which the judgment of forfeiture was had, abandoned the grounds embraced in sections 3256 and 3296, and substituted in lieu thereof sections 3450 and 3453.

The law required the officer making the seizure to report the grounds therefor. And this being the inception of the proceeding, we maintain that the district attorney should have been restricted to the grounds thus reported. But there are still other more serious errors and omissions on the part of government officials which, we insist, make the whole proceeding void. There was no valuation and appraisement of the articles seized, no list and particular description of the articles. Notice and publication required to be made in the district where the property is seized was not made in a paper published in the second District, but in the Louisville Commercial, a paper published in the fifth District.

We have carefully examined the provisions of the Revised Statutes governing seizures in such cases, beginning at section 3074 and ending with section 3087, and we hazard nothing in saying that not a single requirement of the statute has been complied with in this case. It is no answer to all this to say that Coffey came forward, claimed the property seized and thereby waived all these irregularities. He had the right to claim his property wherever found. It was the duty of the Government before despoiling him of his goods to take such steps as to properly adjudicate the question of forfeiture, and this could only be done by complying with the requirements of the statute. It was the *res*, and not the person of the claimant that gave authority to the court to adjudge a forfeiture. The question was a jurisdictional one, and, like all proceedings *in rem*, if the property or thing to be affected by the adjudication is not before or under the control of the court, its adjudication thereon is a nullity.

2. Irregularities of the Court—Premature Submission to the Jury.

The Government interposed a demurrer to the fourth or special plea in bar plead by the claimant, which was not acted on or disposed of in any way by the court below. By this demurrer the truth of the averments of the plea were admitted and inasmuch as it related back to the information it brought up for review the sufficiency of that pleading. It was the bounden duty of the court to have disposed of the demurrer to this plea, otherwise there were no issues made for trial by the jury or, what is worse still, the submission of an issue of law to them; in any event the finding of the jury was of no binding efficacy, because premature and not based upon proper issues of fact. But we come next to consider of a more important question—

3. The Insufficiency of the Information.

The information consists of three counts and is based upon sections 3257, 3450, and 3453 of the Revised Statutes. It will be seen in the opinion of the court below that

"The evidence would not have sustained the second count "under sec. 3450, because the brandy seized was neither re- "moved nor concealed with intent to defraud the United "States. . . . I have considered the proceeding as if it "had only been under section 3257."

That section reads as follows:

"Whenever any person engaged in carrying on the busi- "ness of a distiller defrauds or attempts to defraud the United "States of the tax on the spirits distilled by him, or any part "thereof, he shall forfeit the distillery and distilling apparatus "used by him and all distilled spirits and all raw materials "for the production of distilled spirits found on the distillery "premises, and fined not less than $500 nor more than $5,000, "and imprisoned, etc."

While we deem each and every count of the information fatally defective, we shall confine our argument mainly to the one (3257) upon which the court based its judgment of forfeiture. And in order to a full understanding of said count we copy the same in the words of the information:

"The said A. G. Coffey, being engaged in carrying on the "business of a distiller, did defraud and attempt to defraud "the said United States of the tax on part of the spirits dis- "tilled by him, and that the said two copper stills and other "distillery apparatus were then used by him, and the said "distilled spirits were then and there found on the distillery "premises of him, the said A. G. Coffey."

There are two fundamental principles governing all informations, declarations, or indictments, which ought never to be lost sight of.

First. The accusation or information should set forth every *fact* and *circumstance* material in law to maintain the suit with such precision, clearness, and reasonable certainty as would enable the defendant to prepare his defense; and,

Second. To so allege the time, place, and manner of the committing the offense as to enable the party to plead a former acquittal or conviction if again charged with the *same offense* or cause of action.

Tested by these rules the information in this case is surely defective. It alleges that while engaged in carrying on the business of a distiller he "did defraud and attempt to defraud the United States," but there are no acts or facts averred from which the court could infer either that he defrauded or attempted to defraud the United States. He was a licensed distiller, and certainly no inference of fraud should be indulged in because he was engaged in doing that for which he had a license. There is no allegation that the spirits found on the distillery premises were distilled by him or the product of his distillery, or that the distillery apparatus was wrongfully used. The very most that can be made of this count is that it is stated in a general way that Coffey was a distiller,

that he did defraud and attempt to defraud the United States of part of the tax on the spirits distilled by him, and that the stills and other distillery apparatus were used by him, but does not say for what purpose, and lastly, distilled spirits were found on the distillery premises. Surely every *act* here alleged, even in its broadest scope, may have been done and performed in perfect accordance with his license as a distiller. It was certainly proper for him to use the stills and other apparatus in making brandy, and it was equally right and proper that he should keep the spirits distilled by him on his distillery premises.

We fail to see any fraud or even violation of any law in all that is alleged in the count.

Rule 22 of the Admiralty Rules requires the information to state the place of seizure. . . . "Shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture," etc.

In commenting on this rule Conklin, in his treatise, page 516, says:

"As to the degree of strictness necessary to be observed in framing a libel or information with regard to matters of substance the rule is that every fact and circumstance material in law must be set forth with precision, clearness, and all reasonable certainty. The owner of the property proceeded against is entitled to know exactly what he is called upon to answer."

This point is fully sustained in the case of the Schooner Hoppet and cargo v. United States, 7 Cranch. 389.

In the United States v. One Distillery, 4 Bissell, 26, it is said: "The rules of pleading in this kind of cases are very "lax as to matters of form. As to matters of substance, how-"ever, the better opinion is that every fact and circumstance "material in law to maintain the suit must be set forth with "precision, clearness, and reasonable certainty. The infor-"mation should be as clear and certain as a declaration at "common law." See also Nancy, 1 Gallisan, 67; U. S. v.

Seventy-eight cases Books, 2 Bond, 271; Young v. Cranch, 7 Cranch, 567; 12 Wendell, 399.

In United States v. One Hundred Barrels of Spirits, 2 Abbott, 316, this question is very fully argued, and decided against the Government in a somewhat similar case.

4. Former Acquittal.

The claimant Coffey, in a special plea in bar, averred that in the trial of the criminal information for the same offenses, acts, and crimes set forth in this information a verdict and judgment of acquittal had been rendered, and that he ought not again to be tried for the same offense. The truth of these averments were admitted in the court below. If therefore this case is now affirmed, this anomalous state of case will be presented: On the *same facts*, in the *same court*, between the *same parties*, the defendant is *innocent* as to the fine and imprisoment imposed, but *guilty* enough to forfeit *his estate!!* The idea of punishing a man in one form of proceeding for that of which he was declared innocent in another proceeding in the same court is so repugnant to our ideas of right and justice that we confess to utter surprise that the court below did not at once sustain the plea and dismiss the proceeding. The authorities are so numerous, clear, and plain on this point that we shall content ourselves with only a few references and quotations.

In the case of Fisher v. Commonwealth, 1 Bush, Kentucky Reports, there is a very lengthy argument and reference to authorities, wherein it is made plain that no one should be twice punished for the same *act*, though different offenses might grow out of it. An acquittal of one acquits for all.

In the Duchess of Kingston's case, 2 Smith's Leading Cases, 648, it is said:

"The judgment of a court of competent jurisdiction directly upon the point is as a plea in bar or as evidence conclusive between the same parties upon the same matter directly in question in another court."

See to same effect: 13 Wallace, 469; Miles v. Caldwell, 2 Wall. 43; the Apollen, 9 Wheaton, 362.

In 3 Wheaton, 246, Gilston v. Hoyt, this court said:

"Upon principle, therefore, we are of opinion that the sentence of acquittal in this case, with a denial of a certificate of reasonable cause of seizure, was *conclusive* evidence that no forfeiture was incurred and that the seizure was tortious and *that these questions can not again be litigated in any other forum.*"

In Aura City v. West, 7 Wall. 103, it is said:

"Better opinion is that the estoppel, when the judgment was rendered upon the merits, whether on demurrer, agreed statement or verdict, extends to every material allegation or statement which, having been made on one side and denied on the other, was at issue in the case and was determined in the course of the proceedings."

Vol. 1 Starkie's Evidence, sec. 73, p. 222:

"The record (of acquittal or conviction) pleadable in bar is conclusive upon another indictment or *other proceeding for the same offense;* the parties are the same in both, and no one ought to be brought into jeopardy twice for the same charge."

Sec. 74, p. 223, *ibid:*

"The record conclusive as to the judgment *and as to all legal consequences resulting therefrom.*"

The case of U. S. v. McKee, 4 Dillon, U. S. C. C. 128, is in almost every feature of it similar to the one at bar and, as we think, conclusive of this question.

See also case of Boles v. Lynde, 1 Root, Connecticut Reports.

It is said in 2 Phillips on Evidence, p. 16:

"The criterion for trying whether the matters or cause of action be the same as in the former suit is that the same evidence will sustain both actions."

Now apply that test in this case, and it will be found that it required the very same testimony in last information filed to secure a forfeiture of claimant's goods as it did to convict

him under the criminal information, the penalty for which was a fine, imprisonment, and forfeiture.

We shall conclude what we have to say on this point by quoting from the case of the United States v. Choteau, 102 U. S. S. Court Reports, page 603. The opinion (quoting from *ex parte* Lange, 18 Wall. 163 to 168) says:

"If there is any thing settled in the jurisprudence of Eng-
"land and America, it is that no man can be twice lawfully
"punished for the same offense. And though there have
"been nice questions in the application of this rule to cases in
"which the act charged was such as to come within the defi-
"nition of more than one statutory offense, or to bring the
"party within the jurisdiction of more than one court, there
"has never been any doubt of its entire and complete protec-
"tion of the party where a second punishment is proposed in
"the same court on the same facts for the same statutory
"offense. This principle finds expression in more than one
"form in the maxims of the common law."

See the following case of the United States v. Ulrico, *ibid*, page 612, where this court affirmed the case on the same state of facts.

5. THE CIRCUIT COURT HAD NO JURISDICTION OF THE CASE.

Subsection 3 of section 563 gives the district courts jurisdiction of all suits for forfeitures and penalties incurred under any law of the United States. Subsection 8 of same section makes this jurisdiction *exclusive*, except where given to the circuit courts. So far from conferring, subsection 4 of section 629 expressly excepts suits for forfeitures and penalties from the jurisdiction of circuit courts. Section 631 gives the right of appeal from the district to the circuit courts in admiralty and maritime cases. The rules of admiralty practice are all framed upon the idea that the original jurisdiction of admiralty cases was in the district courts. The mode of trial is pointed out, and must be by the court. The

trial of issues of fact in the district courts, *except civil cases of admiralty and maritime jurisdiction*, shall be by jury. The proof must be taken by way of deposition, and provision is also made for an appeal to the circuit court and the manner and mode of certifying the testimony when an appeal is taken.

In Gilston v. Hoyt, 3 Wheaton, 261, this court uses this language:

"By the constitution the judicial power of the United "States extends to all . . . cases of maritime and admiralty "jurisdiction, and by the judiciary act of 1789 (the same as "the Revised Statutes on this point) the district courts are "invested with exclusive original cognizance of all civil "causes of admiralty and maritime jurisdiction, and of all "seizures on land and water, and of all suits for penalties "and forfeitures incurred under the laws of the United "States."

After a very extended examination of the supreme, circuit, and district court reports, we have been unable to find a single case of this character brought originally in the Circuit Court of the United States. If any thing additional to the requirements of the statutes before quoted was needed to show that the district and not the circuit court was the forum in which this proceeding should have been instituted, it would seem that this unbroken line of precedents would make the question conclusive. In support of this position the following authorities are referred to:

5 Blatchford, 403.
7 Blatchford, 459.
11 Blatchford, 255.
U. S. v. 92 barrels Rectified Spirits, 7 Black, 480.
Young v. Black, 7 Cranch, 567.
16 Howard, 133.
13 Howard, 469.
1 Abbott, 311.
2 Abbott, 305.
11 Wallace, 356.

3 Otto, 274; U. S. v. McKee.
91 U. S. 21; 4 Dillon, 128.
5 Otto, 153; and many others.

In the Belfast, 7 Wall, 643, it is said:

"The exclusive original cognizance of all civil causes of "admiralty and maratime jurisdiction is, by the very terms "of that section (563), conferred upon district courts of the "United States, saving to suitors in all cases the right of a "common-law remedy when the common law is competent "to give it. . . . Common-law remedies are not applica- "ble to enforce a maratime lien by a proceeding *in rem*, and "consequently the original jurisdiction to enforce such a lien "by that mode of proceeding is exclusive in the district "court."

In the Moses Taylor, 4 Wall. 411, this language is used by the court:

"The distinguishing and characteristic feature of a suit in "admiralty is that the vessel or thing proceeded against it- "self is seized and impleaded as the defendant and is judged "and sentenced accordingly. By the common-law process the "property is reached only through a personal defendant and "then only to the extent of his estate. But in maratime pro- "ceedings there must not only be a contract but also a cause "of action, otherwise no cause of action *in rem* can exist."

We deem further reference to authorities on this point superfluous. A reversal is respectfully urged.

See brief in case 1040.

SAM'L MCKEE,
T. T. ALEXANDER,
G. C. WHARTON,
Attorneys for Plaintiffs in Error.

Office Supreme Court U. S.
FILED.
DEC 8 1885
JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

A. G. COFFEY, CLAIMANT OF TEN Barrels of Apple Brandy and other articles, plaintiff in error,
vs.
THE UNITED STATES.
} No. 91.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

A. G. COFFEY, CLAIMANT OF TEN Barrels of Apple Brandy and other articles, plaintiff in error,
vs.
THE UNITED STATES.
No. 91.

BRIEF FOR THE UNITED STATES.

This was an information filed in the circuit court of the United States for the district of Kentucky, in the name of the United States against Ten Barrels of Apple Brandy, &c. The claimant having intervened, made his claim and answer, and upon the issue joined the jury returned a verdict for the United States, and judgment was rendered by which the attached articles were condemned as forfeited to the United States for the reasons and causes specified in the information. To reverse that judgment this writ of error has been sued out and is prosecuted here.

The plaintiff in error makes the following assignments of error:

(1) That the information and matters therein contained are not sufficient in law for the United States

to maintain its action against the said 10 barrels of brandy, &c.

(2) That the circuit court had no jurisdiction of the subject-matter of the action, or of the property seized, or of the person of the claimant.

(3) That there was no sufficient monition, attachment, or seizure of the brandy, &c., and no legal notice and publication of the seizure, and no valuation of the goods as required by law.

(4) In submitting the case to the jury before the demurrer of plaintiff to the fourth count of claimant's answer was disposed of.

(5) In failing to overrule the demurrer to the fourth count of claimant's answer.

As to the first, third, and fourth assignments of error, we deem it sufficient to say that they cannot be noticed by this court, for the reason that no such exceptions were taken on the trial in the court below.

> Matters not presented to or decided by the court below are not assignable for error here. (Edwards *vs.* Elliot *et al.*, 21 Wallace, 532; Wilson *vs.* McNamee, 102 U. S., 572.)

Besides, an examination of the information will show, we think, that it was drawn in accordance with the provisions of the statute; that it is sufficient as to all matters of substance, and that it sets forth the offense with clearness, precision, and reasonable certainty. No objection was made as to its sufficiency. The plaintiff intervened and claimed the goods which had been attached, filed its answer, and submitted to a trial before the jury.

As to the sufficiency of the monition, attachment, &c., and the submission of the case to the jury before the demurrer of the plaintiff to the fourth count of claimant's

answer was disposed of, we insist that if there was any irregularity it was waived by the claimant, and it is too late now to make objection here. Such defects and omissions, if they existed, were cured by the verdict in the court below.

It seems from the opinion of the court, found on page 9 of the record, that the claimant relied only upon two grounds in ~~its~~ his motion for a new trial in this case: (1) That the district court has exclusive jurisdiction of the matter; (2) That the United States had prosecuted the claimant, A. G. Coffey on a criminal information in that court, at its February term, 1881, on charges which covered the offense for which the brandy was seized by the collector, and that upon the trial thereof the jury found the said Coffey not guilty, and that his acquittal under said criminal proceeding was a bar to this proceeding.

The same matters are set forth in assignments of error here, Nos. 2 and 5. As to the first, we think there can be no serious question that the circuit court had jurisdiction. The fourth paragraph of section 629, Revised Statutes, provides that "the circuit courts shall have original jurisdiction of all causes arising under any law providing internal revenue," and section 3453 provides that—

> Proceedings to enforce forfeitures of all goods on which taxes are imposed which shall be found in the possession or custody or within the control of any person for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, shall be in the nature of a proceeding *in rem* in the *circuit court* or the district court of the United States for the district where such seizure was made.

These sections, we submit, place the matter beyond controversy.

As to the fifth and last assignment of error, it should be borne in mind that this information is not a criminal proceeding, but a proceeding *in rem* whereby the United States sought the judgment of the court that the property seized by its officer should be forfeited to the Government. The information was filed under sections 3257, 3450, and 3453 of the Revised Statutes. Section 3257 provides that—

> Whenever any person engaged in or carrying on the business of a distiller defrauds, or attempts to defraud, the United States of the tax on the spirits distilled by him, or of any part thereof, he shall forfeit the distillery or distilling apparatus used by him, and all distilled spirits, and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than $500 nor more than $5,000, and be imprisoned not less than six months nor more than three years.

Section 3450 provides that—

> Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities, are removed or are deposited or concealed in any place with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited. And every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the

> United States of such tax, or any part thereof, shall be deemed liable to a fine or penalty of not more than $500.

Section 3453 provides that—

> All goods, wares, merchandise, articles or objects on which taxes are imposed, which shall be found in the possession or custody, or within the control of any person for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector, or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue to that purpose, and shall be forfeited to the United States. The proceedings to enforce such forfeitures shall be in the nature of a proceeding *in rem* in the circuit court or district court of the United States for the district where such seizure is made.

It is apparent from the foregoing sections that for offenses of this nature there is a forfeiture of the thing as well as a fine and imprisonment of the person. It is therefore not correct to say that the claimant was being tried twice for the same offense. The two proceedings were entirely separate and distinct—the one to ascertain whether the seizure of the brandy by the collector was proper, and the other to determine whether he should be punished by fine and imprisonment. The Supreme Court in the case of the Palmyra, 12 Wheaton, p. 14, said:

> The thing is here primarily considered as the offender, or rather the offense is attached primarily to the thing, and this whether the offense be *malum prohibitum* or *malum in se*. * * * Many cases exist